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A53





Class F374  
Book A53









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ANALYSIS  
OF THE  
THIRD ARTICLE  
OF  
THE TREATY  
OF  
CESSION OF LOUISIANA.

*J.*



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## ANALYSIS, &amp;c.

IMPRESSED with a sense of lively gratitude for the generosity with which the committee of the House of Representatives, from pure regard for our natural rights, proposes to extend to the Louisianians the blessings of self government: feeling, as we ought to feel, the happiness of being attached by indissoluble ties to a nation, whose unalterable principles of human justice secure to us the enjoyment of those inappreciable advantages, which true liberty, in vain sought for in other countries, bestows on this privileged portion of mankind, we should attempt to utter no expression but that of our thanks and of our affection, were we not convinced that our stipulated rights still require some attention. Considering, therefore, that our duty bids us to insist on those rights, in justice to the important trust which our constituents have deposited in our hands, we will take the liberty of analyzing the third article of the treaty of cession of Louisiana.

The third article of the treaty of cession of Louisiana is not, we humbly conceive, vague, indefinite and obscure; it is pointed, it is manifest, it is explicit. The terms of it are as follows: “ The inhabitants of the ceded territory shall be  
“ incorporated into the union of the United  
“ States, and admitted as soon as possible, accord-  
“ ing to the principles of the federal constitution,  
“ to the enjoyment of all the rights, advantages and  
“ immunities of citizens of the United States; and

“ in the mean time, they shall be maintained and  
 “ protected in the free enjoyment of their liberty,  
 “ property, and the religion which they profess.”

We shall now divide this phrase into three parts:

1st. The inhabitants of the ceded territory shall be incorporated into the union.

2d. They shall be incorporated as soon as possible.

3d. They shall be incorporated according to the principles of the constitution.

On the first we say that by the inhabitants of the ceded territory are expressly meant the inhabitants *then existing* in the territory, because France had no right to stipulate the incorporation of the *future* citizens of Louisiana ; we say that the inhabitants, who have been annexed to the United States by the treaty, are those in favour of whom the clause has been made, that consequently any condition depending on *future* circumstances ought to be inadmissible, because it would expose the inhabitants, *who existed in Louisiana at the time the treaty was made*, to be kept out of the enjoyment of rights which have been stipulated *for them*.

*Secondly.* These inhabitants are to be incorporated into the union *as soon as possible*. What mean the words *as soon as possible*, say many persons ? They are vague, they are indefinite. We contend that they are clear and explicit. Whatever may be the construction which may be *vaguely* applied to them, nobody can deny that the words *as soon as possible* signify *without any unnecessary delay*. Therefore any delay, which is not indispensable, is directly opposite to the spirit of the stipulation. But what is this indispensable delay ? It is clearly that which cannot be avoided ; it is the lapse of time during which preparations are made to come to the execution ; it is

a delay which does not depend on the will of parties, which admits of no arbitrary prolongation, but is occasioned by an actual *evident impossibility* of doing the thing sooner.

*Thirdly.* The inhabitants annexed to the United States by the treaty, are to be incorporated into the union *according to the principles of the federal constitution.* These expressions, instead of admitting of any doubts, have been introduced to prevent them. The incorporation of the Louisianians being a new case unforeseen by the framers of the constitution, it was indispensable to say how it was to take place. It is to take place then *according to the principles of the constitution*, or in other words perfectly similar, *on the same principles by which the constitution has regulated the rights of the individual states, and of the citizens of the United States in their relation with the federal government.* Nothing can be clearer than that this part of the stipulation is intended to assimilate the Louisianians to the other citizens of the United States. The novelty of the case required that explanation; and that explanation has been introduced precisely to avoid leaving any doubts respecting that perfect assimilation.

To resume, we say that the stipulation of the treaty is evidently the same as if it had been expressed in the following terms:

“ The inhabitants, who are annexed to the  
 “ United States, by this treaty, shall be incorpo-  
 “ rated into the union, without any unnecessary  
 “ delay, on the same principles by which the fe-  
 “ deral constitution has regulated the rights of the  
 “ individual states, and of the citizens of the  
 “ United States.”

That we conceive to be the clear, indeed the only construction, which can satisfy judgment, reason and justice.

Many persons, on the pretended obscurity of this stipulation, seem to have gone too far. Some say that the incorporation of the Louisianians cannot be executed without the consent of the individual states, because there is no provision in the constitution that authorises *that* incorporation. Others, taking local rules for constitutional laws, pretend that there are certain regulations which prevent the incorporation of the Louisianians, until they are more numerous than at present; others maintain that they must be naturalized according to the rules established for the individuals who come into the United States, all which constructions do not only tend to darken what is clear, but go directly to annul the 3d article of the treaty of cession of Louisiana, as we shall hereafter prove.

In the first place, to ask the consent of the individual states for the incorporation of the Louisianians, after that condition has been accepted and ratified by the federal government, is putting in the power of the states individually to destroy what their federal government has done. If such a step was necessary, it ought to have been made previous to the ratification. Now it is too late, and now it would be exposing the federal government to a dilemma truly afflicting for a government founded on justice, that of breaking their promise.

The objection to the incorporation of the Louisianians until they have acquired a more numerous population, is another groundless difficulty, which goes to annul the third stipulation of the treaty. That stipulation as we have already said, is made in favor of the inhabitants who are annexed to the United States by the treaty, of the inhabitants in whose behalf France had a right to stipulate, not in favor of any *future* population. If there had been certain rules ac-



ording to which a certain population of *any* part of the United States, could claim admission into the union, it was not necessary to stipulate it. It would have been a matter of course. But the constitution fixes no such bounds, expresses no such condition. "New states may be admitted by Congress into this union," are the only expressions which can be found in the constitution relative to this subject.

To pretend that the Louisianians must be naturalized according to the rules established for alien individuals, who come into the United States, is also an assertion, which tends to annul the 3rd article of the treaty of cession of Louisiana. There is not a Louisianian who could not enjoy the benefit of <sup>the</sup> alien law in the United States, previous to the treaty of cession of Louisiana. What then has that treaty secured to him? Is it the advantage which he could acquire without it? Does it go no further than stipulating that the Louisianians shall be treated as all aliens of all countries, who can become citizens of the United States, without any stipulation? Strange indeed is such a difficulty! And the more strange as it comes after Congress has already decided it, by imparting to the Louisianians some of the most precious advantages of citizenship, and admitted many of them to the oath of allegiance and fulfilment of public trusts, which none but citizens of the United States can hold.

Thus we see that any construction of the 3d article of the treaty of cession of Louisiana, which deviates from the plain, the simple, the just sense of it, augments the embarrassment, instead of elucidating the subject.

Let us repeat it once more :

"The inhabitants, who are annexed to the United States by the treaty, are to be incorporated

“ into the union, without any unnecessary delay,  
“ on the same principles by which the constitution  
“ has regulated the rights of the individual states  
“ and of the citizens of the United States.”

Such is the construction which the Louisianians have conceived to be the plainest. But, while we are defending their rights, let it not be supposed that we are presumptuous enough to believe that our explanation was necessary. Parties must expound their claims before their judges, though they know them to be more enlightened than themselves.













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